

## Chapter 5 - Consultation, Permit and Review Requirements

In this Chapter:

- Laws and procedures to be met
- Actions taken
- Consultations

### 5.1 National Environmental Policy Act

This FEIS was prepared by BPA pursuant to regulations implementing the National Environmental Policy Act (NEPA) (42 USC 4321 et seq.), which requires federal agencies to assess the impacts that their actions may have on the environment. BPA's proposal to construct the transmission line and substation requires that it assess the potential environmental effects of the proposed project, describe them in an EIS, make the EIS available for public comment, and consider the impacts and comments when deciding whether to proceed with the project.

### 5.2 Endangered and Threatened Species

The ESA (16 USC 1536) provides for the conservation of endangered and threatened species of fish, wildlife and plants. Federal agencies must ensure proposed actions do not jeopardize the continued existence of any endangered or threatened species, or cause the destruction or adverse modification of their habitat. When conducting any environmental impact analysis for specific projects, agencies must identify practicable alternatives to conserve or enhance such species.

Possible impacts of the proposed facilities to known or suspected occurrences of federal threatened or endangered species or their habitat are discussed in Chapter 4 of the FEIS. Bald eagles are the only federally listed species that could be affected by the proposed project.

Section 7 of the Endangered Species Act, 16 U.S.C. Section 1536(a)(2), requires all federal agencies to consult with the National Marine Fisheries Service (NMFS) for marine and anadromous species, or with the United States Fish and Wildlife Services (USFWS) for fresh-water and wildlife species, if they are proposing an action that may affect listed species or their designated habitat. Each federal agency shall insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat.

If listed species or designated critical habitat is present and could be affected by the proposed project a **biological assessment** (BA) must be prepared to analyze the potential effects of the project on listed species and critical habitat and make an effects

determination. NMFS and/or USFWS review the BA and, if they conclude that the project may adversely affect a listed species or their habitat, issue a biological opinion, which includes a take statement and a list of reasonable and prudent alternatives to follow during construction. If NMFS and/or USFWS find that the project may affect, but is not likely to adversely affect a listed species or their habitat, they will issue a letter of concurrence.

BPA contacted the USFWS for a list of threatened and endangered species with potential to occur in the vicinity of the proposed project. The only species listed on the ESA that occurs in the project vicinity is the bald eagle. Other listed or candidate species which, as determined through further analysis, are not expected to occur in the analysis area, include the yellow-billed cuckoo and the Washington ground squirrel.

No listed species would be adversely impacted by this project and so a biological assessment is not required.

## **5.3 Fish and Wildlife Conservation**

### **5.3.1 Fish and Wildlife Conservation Act**

The Fish and Wildlife Conservation Act of 1980 (16 USC 2901 et seq.) encourages federal agencies to conserve and promote conservation of non-game fish and wildlife species and their habitats. In addition, the Fish and Wildlife Coordination Act (16 USC 661 et seq.) requires federal agencies undertaking projects affecting water resources to coordinate with the USFWS and the state agency responsible for fish and wildlife resources. Because the proposed project would not affect water resources, the Fish and Wildlife Coordination Act is not applicable.

Mitigation measures designed to conserve fish, wildlife and their habitat are listed in Chapter 4. Standard erosion control measures would be used during construction to control limit erosion; removal of woody vegetation would be minimized.

### **5.3.2 Essential Fish Habitat**

Public Law 104-297, the Sustainable Fisheries Act of 1996, amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to establish new requirements for Essential Fish Habitat (EFH): an EFH description in federal fishery management plans, and to require federal agencies to consult with NMFS on activities that may adversely affect EFH.

There is no EFH in the analysis area.

### **5.3.3 Migratory Bird Treaty Act**

The Migratory Bird Treaty Act (16 USC sections 703-712, July 3, 1918, as amended 1936, 1960, 1968, 969, 1974, 1978, 1986 and 1989) implements various treaties and conventions between the United States and other countries, including Canada, Japan,

Mexico, and the former Soviet Union, for the protection of migratory birds. Under the act, taking, killing or possessing migratory birds or their eggs or nests is unlawful. Most species of birds are classified as migratory under the Act, except for upland birds such as pheasant, chukar and gray partridge.

The proposed project may impact birds, including some bird species classified as migratory under the Migratory Bird Treaty Act. Potential impacts to birds as a result of the proposed project are discussed in Section 4.6 of this EIS. In summary, bird fatalities could result from impacts with overhead ground wires during foggy conditions, from increased road traffic along access roads, and from impacts with wind turbines. Average fatality estimates for all birds from regional wind facilities have ranged from 0.9 to 2.9 birds per MW per year. Overall bird use and species richness estimated for the area was low relative to other wind facility sites in the United States, including other open habitat sites. Raptor fatality rates for the proposed project are anticipated to be low (< 0.1 per MW per year). As discussed in Chapter 4, appropriate mitigation measures have been identified to reduce impacts to birds and minimize the risk of bird mortality.

### 5.3.4 Bald Eagle and Golden Eagle Protection Act

The Bald Eagle Protection Act (16 USC 668-668d, June 8, 1940, as amended in 1959, 1962, 1972, and 1978) prohibits the taking of possession of and commerce in bald and golden eagles, with limited exceptions. Because a small number of bald and golden eagles may reside within foraging distance of the proposed project, there is a remote possibility some mortality could result. However, because the Act covers only intentional acts, or acts in “wanton disregard” of the safety of golden or bald eagles, this project is not viewed as subject to its compliance. See also Section 4.6 of this FEIS.

## 5.4 Heritage Conservation

The US Congress has passed many federal laws to protect the nation’s cultural resources. These include the National Historic Preservation Act, the Archeological Resources Protections Act, the American Indian Religious Freedom Act, the National Landmarks Program, and the World Heritage List.

A cultural resource is an object, structure, building, site or district that provides irreplaceable evidence of natural or human history of nation, state or local significance. A cultural resource can also include traditions, beliefs, practices, lifeways, arts, crafts, and social institutions of any community, often referred to as **traditional cultural property**. Cultural resources include traditional cultural property, National Landmarks, archeological sites, and properties listed (or eligible for listing) on the NRHP.

Construction, and operation and maintenance of BPA’s action alternatives could potentially affect cultural resources. A literature review of the analysis area was done to determine the prehistory and history of the area and the probability of finding cultural resources that may be affected by the project. A cultural survey of the action alternatives’ rights-of-way was conducted in fall 2005. None of the previously recorded cultural resource sites occur on or near the proposed project area. None of the cultural

resource isolates identified during the surveys appear to be eligible for listing on the NRHP.

If, during construction, previously unidentified cultural resources that would be affected by the proposed project are found, BPA would follow all required procedures set forth in the following regulations, laws, and guidelines: Section 106 (36 CFR Part 800) of the National Historic Preservation Act of 1969, as amended (16 USC Section 470); NEPA (42 USC Sections 4321-4327); the American Indian Religious Freedom Act of 1978 (PL 95-341); the Archaeological Resources Protection Act of 1979 (16 USC 470a-470m); and the Native American Graves Protection and Repatriation Act of 1990 (PL 101-601). See also Section 4.10.

Construction, and operation and maintenance of the wind projects could also potentially affect cultural resources. See Section 4.10.

## **5.5 Federal, State, Area-wide, and Local Plan and Program Consistency**

The proposed transmission line and new John Day 230-kV substation would be constructed by BPA, which is a federal agency. Pursuant to the supremacy clause of the U.S. Constitution, BPA is not subject to local and state land use or building regulations, and this is not obligated to obtain state and local land use approvals or permits. BPA would, however, strive to meet or exceed the substantive standards and policies of state and local regulations.

The proposed wind projects would be required to obtain applicable state and local land use approvals and permits.

### **5.5.1 Federal Management Plans**

#### **5.5.1.1 Two Rivers Resource Management Plan Record of Decision (June 1986)**

This plan identifies the Deschutes River and John Day River canyons as areas of high visual quality. These areas are designated as Special Management Areas. Because the proposed projects would not occur on BLM administered land, BLM management plans and policies would not apply to the transmission line routes or proposed wind power facilities.

#### **5.5.1.2 Record of Decision John Day Proposed Management Plan, Two Rivers and John Day Resource Management Plan Amendments (February 2001)**

Beginning at Tumwater Falls, near river mile 10, and upstream through the analysis area, the John Day River is designated as a National Wild and Scenic River. The Wild and Scenic designation and the management plan apply to the river itself and to the lands that lie within 0.25 to 1 mile of each bank.

Along the part of the river in the study area, there would be no change in the VRM class, which would mean that the BLM lands in the Wild and Scenic River along this segment of the river would be managed in accordance with VRM Class II standards, permitting changes to the existing character of the landscape that do not attract the attention of the casual observer. Because the area of jurisdiction of this plan is the National Wild and Scenic River, which has a variable boundary that extends only 0.25 to 1 mile on either side of the river, developments outside of the boundary, regardless of their scenic impacts, would not be regulated by this plan.

#### **5.5.1.3 Lower Deschutes River Management Plan Record of Decision (February 1993)**

The geographic jurisdiction of this plan is the lower section of the Deschutes River designated as a National Wild and Scenic River, which has a variable boundary averaging approximately 0.25 mile on either side of the river. This plan does not regulate developments outside of the boundary, regardless of scenic impacts.

#### **5.5.1.4 Management Plan for the Columbia River Gorge National Scenic Area (September 1992, revised May 2004)**

The CRGNSA consists of the 80-mile corridor extending along the Columbia River from Troutdale to the Deschutes River. The transmission line and proposed wind projects lie outside of the scenic area's eastern boundary. Four key viewing areas within the CRGNSA are located near the proposed projects: the Columbia River, the Historic Columbia River Highway, I-84, and SR-14. Management plans for the CRGNSA would not apply to the proposed BPA transmission line or wind power facilities because they are outside of the planning area boundary. No direct federal CRGNSA review of activities is required.

### **5.5.2 Sherman County Planning Framework**

The project area is within unincorporated Sherman County, Oregon. The Sherman County Comprehensive Plan (2003a) outlines goals and policies that direct how development should occur, including energy facilities, to protect the scenic, economic, historic, and recreational qualities of the county. The most applicable goals and policies related to the project are contained in Section XV-Energy Policy I, which encourages the County to cooperate with public agencies and private individuals in the use and development of renewable resources; and Policy III, which addresses the need for high-voltage transmission lines (in excess of 230-kV) to locate within existing ROW, unless approved by the County.

Typically, Sherman County reviews wind power facilities as conditional uses, although as part of the ASC, the Oregon Department of Energy can also review the ASC based on local development standards to determine if the proposed project meets local development standards. The local planning department provides comments on the

application and proposed conditions of approval, which are incorporated into the land use decision.

Because BPA is a federal agency, federal sovereignty applies, and no local permitting is required. Federal actions are exempt from the Sherman County planning process (Macnab, 2005), although BPA would comply, to the greatest extent practicable, with local land use regulations.

Section XI of the Sherman County Comprehensive Plan identifies important landscape features within the County. These include rock outcroppings, trees, and the John Day River and Deschutes River canyons. The County's Goal X is to "preserve the integrity of the Sherman County Landscape." Policy I of Goal X states "trees should be considered an important feature of the landscape and therefore the County Court shall encourage the retention of this resource when practical." Goal XII is to "provide for the rational use of all resources within the designated Deschutes and John Day Oregon State Scenic Waterways." None of the proposed actions would have a direct impact on either scenic area.

## 5.6 Farmland Protection

The Farmland Protection Policy Act (Public Law 97-98) (FPPA) is authorized by the NRCS. The purpose of the FPPA is to minimize the extent to which federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses. The FPPA attempts to ensure that federal programs are administered in a manner that, to the best extent practicable, will be compatible with state, unit of local government, and private programs and policies to protect farmland. The FPPA does not cover private construction subject to federal permitting and licensing, projects planned and completed without any assistance from a federal agency, federal projects related to national defense during a national emergency, and projects proposed on land already committed to urban development.

The FPPA designates farmland as prime, unique, of statewide importance, and of local importance. There are no unique farmland map units recognized in Sherman County (Campbell, 2006). Prime, statewide importance, and local importance are defined as:

Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, and without intolerable soil erosion, as determined by the USDA. Prime farmland also includes land that possesses the above characteristics but is being used currently to produce livestock and timber; farmland, other than prime or unique farmland, that is of statewide or local importance for the production of food, feed, fiber, forage, or oilseed crops, as determined by the appropriate State or unit of local government agency or agencies, and that the USDA determines should be considered as farmland.

Soils in the analysis area are shown in Table 3-3 in Section 3.4. The State of Oregon rates farmland based on soil capability information produced by the NRCS. The

State considers any soil map unit in eastern Oregon in land capability class 6 or less to be farmland of statewide importance (Campbell, 2006). Within the analysis area, seven soil map units are classified as farmland of statewide importance and seven soil map units as prime farmland only if irrigated. The irrigated land that would be impacted by the proposed project is not one of the soil units considered prime farmland if irrigated.

Sherman County does not consider any soils map unit within the county as high-value farmland, although because federal funds would be used to construct the transmission line and substation, and because the NRCS and State of Oregon have designated high-value farmland that would be converted to other uses, BPA completed and submitted the Farmland Conversion Impact Rating AD-1006 to NRCS. NRCS determined that both action alternatives would affect a similar amount of soils considered prime, unique, statewide or locally important farmland. BPA determined that the proposed project would minimize conversion of farmland by permitting existing farming practices to continue within the transmission line ROW and would be consistent with the FPPA. See Sections 3.1, Land Use, and 3.4, Geology and Soils, for a description of agricultural practices in the analysis area.

## **5.7 Recreation Resources**

### **5.7.1 Federal**

Guidance provided by the United States Department of the Interior regarding Federal Wild and Scenic Rivers states “management principles may apply to private lands only to the extent required by other laws such as local zoning and air and water pollution regulations” (Federal Register, 1982). The proposed facility is outside the Federal Wild and Scenic Rivers Act’s jurisdiction because the site boundary is beyond the designated Wild and Scenic River corridor and because the Sherman County Comprehensive Plan does not place additional restrictions on development relevant to the Wild and Scenic River designation.

### **5.7.2 State of Oregon**

The Oregon State Scenic Waterways Act also does not govern the facilities, because they would be located beyond the Act’s jurisdiction, which extends to all land within 0.25 mile of the bank on each side of the scenic waterway. ORS 390.805(1), 390.845(2)(e); see also OAR 736-040-0015(5) and (10).

The proposed facilities would not be visible from state parks within the analysis area.

## **5.8 Floodplain/Wetlands Assessment**

In accordance with USDOE regulations on compliance with Floodplains/Wetlands environmental review requirements (10 CFR 1022.12), and Executive Orders

(EOs) 11988 and 11990, BPA has prepared the following assessment of the impacts of the alternatives on floodplains and wetlands.

### **5.8.1 Project Description**

The analysis area lies in an arid climate; waterways and wetlands are rare. All transmission and wind turbine towers and substation facilities can be located to avoid waters of the US. Linear features, such as roads and underground transmission systems, cannot always avoid these features.

### **5.8.2 Floodplain/Wetlands Effects**

The project would not impact any floodplain or wetlands.

### **5.8.3 Alternatives**

Both BPA action alternatives and the No Action Alternative would have no impacts to waters of the US.

### **5.8.4 Mitigation**

Mitigation for the proposed impacts includes seeding and planting a 2,000-square-foot area adjacent to one of the intermittent drainages.

## **5.9 Executive Order on Environmental Justice**

Executive Order (EO) 12898 on Environmental Justice requires agencies undertaking federal projects to evaluate whether any adverse human health or environmental impacts of the proposed project would fall disproportionately on low-income or minority populations in the analysis area, and ensures outreach to and involvement of minority and low-income communities in the decision-making process.

An important component of EO 12898 is assuring that all portions of the population have a meaningful opportunity to participate in the development of federal projects regardless of race, color, national origin, or income. Council on Environmental Quality guidance states that agencies should acknowledge and seek to overcome linguistic, institutional, geographic, and other barriers to meaningful participation, and should incorporate active outreach to affected groups. The public involvement process is described in Section 1.3, Scoping and Major Issues. A public meeting was held during the public comment period for the DEIS. Copies of this FEIS will be sent to the interested parties listed in Chapter 7.

US Census information from 2000 was used to identify potential impacts. None of the action alternatives would have a disproportionate adverse impact on minority or low-



income populations. No displacements would occur as a result of the action alternatives and construction would generally be located outside of any population centers.

## 5.10 Global Warming

The mass transfer of carbon from the earth to the atmosphere and back again is called the carbon cycle. The atmosphere, plants, oceans, rocks and sediments act as reservoirs for carbon. Since industrial times, this carbon balance has been upset because of fossil fuel consumption and timber harvesting, and there has been a dramatic increase in the amount of carbon dioxide in the earth's atmosphere. Because carbon dioxide is a greenhouse gas, its increasing atmospheric concentration is thought to contribute to global warming.

The project would enable construction and operation of about 700 MW of wind power generating capacity. Wind power technology does not emit greenhouse gasses, except in the manufacture of the equipment and during construction. No removal of woody vegetation would occur. All areas cleared for construction would be revegetated.

## 5.11 Energy Conservation at Federal Facilities

No new buildings would be installed at BPA substations other than control houses. The building designs for the control houses would meet federal energy conservation design standards.

## 5.12 Pollution Control at Federal Facilities

There are two pollution control acts that apply to this project:

**Resource Conservation and Recovery Act (RCRA)** - The Resource Conservation and Recovery Act, as amended, is designed to provide a program for managing and controlling hazardous waste by imposing requirements on generators and transporters of this waste, and on owners and operators of treatment, storage and disposal (TSD) facilities. Each TSD facility owner or operator is required to have a permit issued by EPA or the state.

Typical construction and maintenance activities in BPA's experience have generated small amounts of these hazardous wastes: solvents, pesticides, paint products, motor and lubricating oils and cleaners. Small amounts of hazardous wastes may be generated by the project. These materials would be disposed of according to state law and RCRA.

**Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)** - This Act registers and regulates pesticides. BPA uses herbicides only under controlled circumstances. Herbicides are used on transmission line rights-of-way and in substation yards to control vegetation, including noxious weeds.

When BPA uses herbicides, the date, dose and chemical used is recorded and reported to state government officials, as required by state law. Herbicide containers are disposed of according to RCRA standards. And any herbicides used on private land, would only be done so with the knowledge and permission of the landowner.

**Noise Control Act** - The federal Noise Control Act of 1972 (42 USC 4903) requires that federal entities, such as BPA, comply with state and local noise requirements.

As discussed in Section 4.11, the calculated median level ( $L_{50}$ ) during foul weather at the edge of the ROW would be about 45 dBA, below the BPA transmission line design criteria for corona-generated audible noise which is 50 dBA at the edge of the ROW. During fair weather conditions, which occur about 94 percent of the time, audible noise levels at the edge of the ROW would be about 20 dBA if corona were present. The lower levels would likely be masked by ambient noise (such as wind or traffic noise) on and off the ROW.

The 45 dBA level would meet the Oregon Administrative Code limit for transmission lines.

### 5.13 Emission Permits under the Clean Air Act

DEQ and local air pollution monitoring agencies operate air quality monitors in Portland, Salem, Eugene and Medford, Oregon. Air pollution can be from one or a number of sources (e.g., vehicle emissions, industry, and natural occurrences, such as blowing dust). DEQ has authority to designate nonattainment or maintenance areas where emissions exceed US Environmental Protection Agency (EPA) air quality standards. Nonattainment areas are geographic areas that have not consistently met the NAAQS. Maintenance areas are geographic areas that have had a history of nonattainment but now consistently meet the NAAQS.

No emission permits would be required for the proposed project. Any impacts to air quality would be short-term and construction-related. There are no identified air quality problems in the analysis area, which is in attainment for all NAAQS.

### 5.14 Discharge Permits under the Clean Water Act

The Clean Water Act regulates discharges in to waters of the US.

**Section 401** – Section 401 of the Clean Water Act, the State Water Quality Certification program, requires that states certify compliance of federal permits and licensees with state water quality requirements.

**Section 402** – This section authorizes storm water discharges associated with construction activities greater than 1 acre. For Oregon, DEQ has a general permit authorizing entities to do construction projects, provided appropriate erosion control measures are implemented.

**Section 404** – Authorization for the US Army Corps of Engineers is required when there is a discharge of dredge materials or fill material into waters of the US, including wetlands.

The BPA action alternatives, the Klondike III Wind Project, and the Biglow Canyon Wind Farm would each result in disturbance of more than 1 acre of land, and a general permit for storm water discharges associated with construction activities will be obtained from DEQ.

Waters of the US could potentially be impacted by one of the wind power projects. The Biglow Canyon Wind Farm project would impact 0.02 acre of intermittent streams, which are jurisdictional waters of the US. A Corps permit is required under Section 404 of the Clean Water Act for these impacts. PGE will apply for the permit.

### **5.15 Underground Injection Permits under the Safe Drinking Water Act**

No underground injection permits would be needed.

### **5.16 Notice to the Federal Aviation Administration**

As part of transmission line design, BPA seeks to comply with FAA procedures. Final locations of structures, structure types, and structure heights are submitted to FAA for the project. The information includes identifying structures tall than 200 feet above ground, and listing all structures within prescribed distances of airports listed in the FAA airport directory. BPA also assists the FAA in field review of the project by identifying structure locations. The FAA then conducts its own study of the project and makes recommendation to BPA for airway marking and lighting. General BPA policy is to follow FAA recommendations.

Because of the size of the wind turbines, the FAA may require aviation warning lights on some turbines. The number of turbines with lights and the lighting pattern of the turbines would be determined in consultation with the FAA.

